

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on December 16, 2002 at 7:00 P.M. in the Public Meeting Room, First Floor of the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Bill Beckwith, Chairman
David Bartosh, Vice-Chairman
Tom Mahon
Ron Mabra
Larry Blanks

MEMBERS ABSENT: None

STAFF PRESENT: Bill McNally, County Attorney
Delores Harrison, Zoning Technician
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

STAFF ABSENT: Kathy Zeitler, Director of Zoning/Zoning Administrator

Welcome and Call to Order:

Chairman Beckwith called the meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff and confirmed there was a quorum present.

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1. Consideration of the Minutes of the meeting held on November 18, 2002.

Larry Blanks made the motion to approve the Minutes as circulated. David Bartosh seconded the motion. The motion unanimously passed 5-0.

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Delores Harrison read the procedures that would be followed for presentation and opposition for petitions.

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2. Consideration of Petition No. A-528-02, Jackie L. Mask, Owner, and Doug Barker, Agent, request Variances to allow a proposed 199 foot Communications Tower to locate within the Highway Corridor. Option A - (1) A 495 foot Variance to reduce the distance between a tower facility and an off-site residence from a minimum of 1,000 feet to a minimum of 505 feet; Option B - (1) A 50 foot Variance to reduce the setback from nonresidential property from a minimum of 50 feet to a minimum of 0 feet, (2) a Variance to eliminate the required 10' landscape strip on the west side of the proposed tower facility, and (3) a 236 foot Variance to reduce the distance between a tower facility and an off-site residence from a minimum of 1,000 feet to a minimum of 764 feet; Option C - (1) A 283 foot Variance to reduce the distance between a tower facility and an off-site residence from a minimum of 1,000 feet to a minimum of 717 feet. This property is located in Land Lot 253 of the 4th District, fronts on S.R. 85 South and McBride Road, and is zoned A-R. (This petition was discussed at the October 28, 2002 Z.B.A. hearing and tabled to allow the applicant to provide alternative locations on site).

Doug Barker representing East Jasper Towers, LLC advised that they had begun development of a communication structure along this stretch of Highway 85 to meet the needs to multiple wireless communication carriers. He said that Cingular Wireless, formerly BellSouth Mobility, had been trying to provide coverage to this area for over a year, but had been denied a couple of times, both to the north and west of this location. He reported that upon execution of a land lease they contacted Cingular and they confirmed that they were still looking for a tower location in this area. He

confirmed that Verizon and AT&T had just begun their design to provide coverage in this area and Sprint PCS had been seeking coverage and had committed to co-locating on this tower structure. In addition, he commented that East Jasper Towers donated some space to the County after learning of their need to utilize a tower structure in the area.

Mr. Barker remarked that he would like to give a little background as to how this parcel was determined to be the most suitable location for the facility. He said that they began the search in this area by reviewing the Fayette County Zoning Ordinance in trying to determine favorable locations as the County sees it. He commented that they discovered the area called the Highway Corridor, which are areas within 1,000 feet of Highway 85, and that the ordinance spells those out as being favorable locations for these facilities. He turned his attention to his tax map which indicated the Highway Corridor area in green along both side of Highway 85 and the areas in yellow as properties that they contacted to locate towers on. He presented tax maps from the north to the south of the search areas to show the number of properties contacted and investigated to locate this facility on. He confirmed that every parcel of property in the area that was in a favorable location would meet the setbacks for a tower structure. He reported that there were a couple of properties which would meet the setback requirements, but unfortunately none were leaseable. He said that they contacted the property owners but they were unwilling to enter into a lease agreement to locate a tower structure on their property. He stated that they then took the remaining sites and tried to determine the best location for the structure. He went on to say that they ended up at this parcel of property. He advised that anytime they are locating the structures that they try to keep them near commercial uses as much as possible. He noted that there is a parcel cut out of this property which has a gas station on it and it does have a commercial feel as you drive up and down Highway 85. He added that they thought this would be a good location for the tower structure. Upon investigating it further, he said that they did notice the residential areas around the site, and unfortunately there are residential areas just exactly like this all up and down this corridor. He pointed out that in the Highway Corridor per the ordinance, a 250 foot tower is administratively approved provided the setbacks are met. He stated that they lowered the height of the tower to 195 feet plus a 4 foot lightning rod to bring it under the 200 foot mark, and it does not require lighting by the F.A.A. which is the reason for doing so. He confirmed that this parcel of land is located within 1,000 feet of Highway 85.

Mr. Barker reminded the Z.B.A. that he was before them with this application which was tabled to look at some alternative locations for the tower on the property. He advised that he had come up with a couple of alternative options as well as the original location. He briefly hit the three (3) options: Option A. Original proposed location which requires a 495 foot variance to locate the facility 505 feet from the nearest off-site residential structure. He said it is located into the wood line to further shield the view. He added that this is the area where they did the balloon test to determine impact on surrounding properties and it wasn't visible from the vast majority of the properties. He stated that he would like to skip to Option C. He stated that the proposed location, just like the original, requires only a single variance and the variance would be to the same requirement, the setback of 1,000 feet to the nearest off-site residential structure. He commented that the variance would need to be reduced to 717 feet from the off-site structure in this location. He reported that Option B. consists of three (3) variances but it more addresses the concerns of the Z.B.A. and of the public surrounding this site. He said that this location put the tower site directly abutting the gas station property which is the need for the first variance, the setback to the gas station property. He advised that they had contacted the owner of the gas station property Mr. Norman Pope who says he does not have a problem with locating the tower against his property line and actually offered some of his property for access if needed. He added that Mr. Pope agreed to produce a letter to that effect if necessary. He commented that the second variance since the site would be located against another piece of property would be to waive the 10 foot landscaping requirement for that side. He confirmed that the site is set inside the wood line which is a very heavily wooded area. He added that it was hard to even walk around down there so waiving the landscape strip on that side would not have much of an effect and they would have to take out trees to put the tower in anyway. He said that the third variance would be the same variance, that they can't get around on this piece of property or any of the other ones that they looked at, which would be the distance to off-site residential structures. He stated that this location would put the site 764 feet to the nearest off-site residential structure

requiring a variance of 236 feet. He commented that though it does have more variances, he felt like it addressed the concerns better than the other two options.

In closing, he said that a communication facility is necessary in this area because it is proven by Sprint and the County's need out there, and the departmental comments since the County Engineer concurred that it is necessary for Sprint's coverage in the area. He stated that through extensive research East Jasper Tower determined this site to be the most suitable location since it is well shielded from view, its inside the wood line, and it is as far as they can get from off-site residential structures and still meet the other setbacks from Highway 85. Due to all of these factors, he stressed that this site meets the purpose and intent of this section of the Fayette County Zoning Ordinance as referenced in the justification of request since they meet the requirements necessary for granting a variance. In addition, he pointed out that this site meets or exceeds the requirements of the F.C.C., F.A.A., and Georgia State Historic Preservation Office. He said that East Jasper Tower respectfully requests approval of this application.

Chairman Beckwith asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition of the petition.

Brenda Evans of 195 Shamrock Drive said that if you go down Highway 85 that it is not predominantly commercial, since the only commercial piece is the gas station. She advised that once you get past the Kroger that Highway 85 is predominantly residential, or schools and churches. She confirmed that the subject property abuts her property and there is a wooded strip, but once the trees are cut down for the tower it will not be heavily wooded. She pointed out that cell phone towers are nothing but two-way radios and all they do is produce radio frequency radiation which is how they work. She said that radio frequency radiation is non-ionizing and its biological effects are fundamentally different from the ionizing radiation produced by x-ray machines. She commented that the radiation from these towers once the energy is absorbed into the body is very, very dangerous. She remarked that we have known through many, many studies that say that it does cause cancer. She stated that the General Accounting Office of the U.S. Government says that laboratory studies on human volunteers have investigated whether radio frequency exposure has certain noncancerous effects such as neurological changes or changes in blood pressure. She commented that some of these studies have reported effects including changes in the brain activity, reaction times, and even sleep patterns. She remarked that according to the World Health Organization, that these standards develop and they create subsequently just nothing but problems such as cancer, brain tumors, and those kinds of things.

Ms. Evans advised that the F.C.C. has gone so far as to complete an action to require and prescribe effective rules concerning the environmental effects of radio frequency emissions. She said that it has been known for many years that radio frequency energy at high enough power can heat the tissue causing damage to living organisms. She stated that in scientific tests, and all this is coming from the Georgia Accounting Office of the U.S. Government, animals had adverse behavior effects once they absorbed enough radio frequency energy to increase their body temperature by one degree Celsius alone.

Ms. Evans reported that there was a school system, but she would leave out the name, but there was an outbreak of cancer at a primary school and a court order forcing the removal of the nearby telephone transmitters held responsible. She noted that this had led to demands throughout the country for transmitters to be pulled down. She confirmed that four (4) children between the ages of 5 and 10 at this particular school were diagnosed with cancer since 36 powerful transmitters were installed 18 months ago only 50 building meters away. She stated that the three (3) cases of Leukemia and one (1) case of Hodgkins Disease were diagnosed among more than 450 pupils in a much greater instance of child cancer than the national average of 14 in 100,000. She advised that Dr. Lewis Martin, who is a Physician but also has a student at that school, said that in 32 years there had never been a case of cancer there, but since they installed those towers in 2002, four children have fallen seriously ill and they do not believe that this was a coincidence. She added that there is also a Dr. Henry Lye at the University of Washington in Seattle who has done 20 years of research on cell phone towers. She reported that his studies show that prolonged exposure to electromagnetic

radiation at constant low levels affects the nervous system. She went on to say that the stage we are at now is like the beginning of the awareness of the dangers of asbestos. She said that the rule of thumb is that the closer you are to the antenna the greater the danger from power. She remarked that thermal radiation is exactly like putting a sandwich in a microwave oven, you stand too close and you will heat up. She added that as soon as you leave the area your body recovers but if you get 20 degrees above your temperature, permanent damage is possible. She advised that there is a family who suffered from chronic headaches and ringing in the ears as well as fatigue symptoms as a result of two cellular towers near their home. She stated that Dr. Lye says that the sad part is that the burden is on the citizens to prove that there is a danger rather than on the industry to prove that it is benign. She commented that there is also scientific evidence that links the low level electromagnetic radiation commonly referred to as EMR to genetic damage, neurological disease, and cancer. She said that Dr. Lye has headed this team for more than 20 years and he also says that cell phone towers cause DNA damage which can lead to the increased risk of cancer, and sufficient DNA damage can kill your nerve cells and lead to neurological disorders like Alzheimer's Disease, Parkinsons Disease, and Huntington Disease, and can also interact with other medications. She continued by saying that it has also been proven that radiation from a cell phone tower can be dramatically increased by the common practice of adding new antennas to an existing tower, and these increases are rarely ever monitored.

Ms. Evans said that Patty Waller with the Washington Department of Health says that cell phone towers are much like other unforeseen health hazards that we have had in our past, such as birth control devices, silicon breast implants, and those kinds of things which we did not know were bad until they were already over with. She stated that Liz Granton who is with the OSHA says that if you cannot say without any doubt that there is never going to be any kind of health affects from exposure to the EMR at the cell phone tower, would it not be prudent for our Health Department to protect the citizens from something that could happen in the future.

Chairman Beckwith interrupted Ms. Evans and said that she had quite a bit of information and he appreciated all of the research she had done. He asked if she had any other information other than the radiation issue.

Ms. Evans replied that there is a school just a spits throw away from the cell phone tower. She asked Chairman Beckwith if he wanted to expose those children to the possibility of cancer and brain tumors and those kinds of things. She said that in effect it will also damage the looks of the neighborhood. She stated that you have to stop and think, do you want to take that responsibility if you have children at that school at Whitewater who are going to come down with cancer, brain tumors, or leukemia, do you want that responsibility. She added that it was really strange that health and safety questions arise, but they are often dismissed by the very people entrusted to protect our community and our welfare, and these are our Planners and Zoners. She respectfully requested the Z.B.A. to deny this variance for a cell phone tower.

Chairman Beckwith stated that he needed to inform the audience of a point which had come up in a number of cell phone tower requests and it also came up a few months ago. He said that Attorney McNally would correct him if he misstated this. He advised that it was his understanding that if a cell phone tower and the transmitter and antenna on the cell phone tower are approved by the F.C.C. that the Federal Courts have held that this is not an issue that can be considered in placing a cell phone tower at a particular location.

Attorney McNally said that the consideration which you must give to it is zoning, strictly zoning and the argument of radio waves is not one which is recognized as far as your jurisdiction is concerned. Chairman Beckwith asked if the Z.B.A. could give any consideration to the radiation issue.

Attorney McNally replied that he was saying that the Z.B.A. could not deny this request based upon radio waves.

Chairman Beckwith stated that this had come up in another situation and he knew there was a concern about it and Ms. Evans had quiet a bit of research, but the Z.B.A. is bound to follow the rules and not consider that particular issue in a variance request.

Ms. Evans asked if she was allowed to ask another question.

Chairman Beckwith replied no and asked if there was someone else to speak in opposition.

Robert Cariola of 676 McBride Road stated that he addressed the Z.B.A. on the evening of October 28th and thanked them in advance for allowing him to address them again. He said he was here to state his opposition to the placement of the cell phone tower at the location which the petitioner had asked for. He remarked that his reasons were many, and he would not touch the radio frequency radiation which was just discussed, but he asked the Z.B.A. to consider that because it is a very serious concern for the citizens of this County. He commented that at the last meeting Mr. Barker stated on behalf of the petitioner that they had already done additional measurements and had taken the location of the homes in the surrounding area into consideration, and that this was the best that they could do, given the close proximity of the homes in its surrounding location. He said he felt at that time that, and in and of itself, should have been grounds for the petition to be denied. Additionally, he reported that Mr. Barker's offer to allow Fayette County to utilize this tower was inappropriate and an unethical attempt on his part at trying to get this petition approved. He went on to say that his experience with this board in the past had shown them to be fair, ethical, and unbiased in their decisions. He stated that his offer was an attempt to sway a decision to his favor and he would like to go on record as saying this is unacceptable. He maintained that a residential neighborhood is not a place for a cell tower because there are plenty of industrial areas to the south of McBride Road that could support the placement of a cell phone tower without negatively impacting the neighborhood and the environment like this tower will. He stressed that the zoning in this County was established for a reason, and if the petition is approved to allow the placement of a cell phone tower even 50 feet closer to a dwelling than the 1,000 foot minimum the Zoning Ordinance currently mandates, he feared that a precedent would be set in this County and it would open the flood gates to give any cellular company the okay to place a cell phone tower much closer than 1,000 feet to any private residence, including your home and mine.

Mr. Cariola stated that he would like to heighten awareness of some of the things which had been going on in the vicinity of McBride Road these past few years. He advised that there is a cellular tower less than one mile as the crow flies from the petitioner's proposed site. He said it is located on the property of a Mr. McBride located at McBride Road and Old Greenville Road. He reported that this was erected just over a year ago. He remarked that it was his understanding that in Section 5-40.,D.,1.,E. and Section 5-40., F.,3. of the Zoning Code that the minimum distances of one mile and two miles between towers are referenced, and the intent of these two sections seemed to be that no new towers are erected within 2 miles of a tower that is already in place outside of the highway corridor. He added that more specifically, to have no tower in the highway corridor within a mile of another tower. He went on to say that in either case this proposed tower either violates these sections or comes very, very close to placing two cell phone towers too close to one another. He said it was his understanding that Nextel and AT&T are adding their signals to this existing tower so he asked how many more towers are needed in this area. He pointed out that there is also another cell tower approximately two miles from this location on Highway 92 and McBride Road on the property of Mr. Webb Mask. He added that there is also an F.A.A. Air Traffic Control tower located on Antioch Road and Highway 92 which is less than one mile and a half as the crow flies from the proposed petitioner's site. He remarked that this one has been there for years but as previously mentioned we have a new 911 tower going up at Porter Road and Highway 85 and that is approximately two miles as the crow flies from this proposed site on McBride Road. He asked the question again, how many cell towers do we need in this area. He said he thought the area is saturated enough and the cellular company and the contractor need to move on and look elsewhere because the beauty of the area which we live in is slowly being destroyed piece by piece and he was really not happy about it. He went on to say that he pays way too much in taxes and his property is worth too much money to allow this to happen.

Mr. Cariola stated that he wished to address something that Mr. Bartosh mentioned at the last meeting, about being in favor of a cell tower in the south side of town because he had experienced cell service failure in that area.

David Bartosh confirmed that it has a lot more to do with it than just that.

Mr. Cariola replied that he understood what Mr. Bartosh was saying because he has had many cell companies in his ten to twenty years of having a cell phone. He confirmed that you would find dead spots no matter where you go, but Mr. Bartosh's only admission was he stated that his kids attend Mintor Elementary School, and he thought the proximity of about one half mile from the proposed cell tower site is dangerously close to any school. He added that he believed that it is a safety issue because of the electromagnetic radiation mentioned prior, but also he did not want to take the risk. He said that he knows the F.C.C. approves these things, but that is also a branch of government that said living under high voltage lines was safe, only to find out that there is leukemia and cancer associated with people who live under those too, so he is not real happy about that. He remarked that he still thought that there are plenty of industrial areas south of McBride Road which can be considered along that corridor, but the health and the well being of the residents of this community are more important than the greed of a few for the convenience of seamless cell service. He commented that he thought that the tradeoffs are a no-brainer, and if you are concerned with 911 availability then the new tower at Porter Road and Highway 85 will take care of that issue. He pointed out that Mr. Barker stated at the last meeting that the proposed location at McBride Road was considered the best location for them, but they don't live there and they don't have to look at the tower, or have their property values or their health affected by the placement of such a tower. He added that Mr. Barker also stated that studies have shown that it does not affect property values, but he disagreed. He reported that while the actual appraised value of a home may not change based on the millage rates and the size of the property and the dwelling, he believes that a cell tower next to a home would certainly impact the owner's ability to sell that home, thereby affecting the value. He asked if any of the Z.B.A. would buy a home with a cell tower right next to it, because he certainly would not, and he did not think anyone in the room would. He stressed that he thought it would affect the re-sale value of their homes on McBride Road regardless of what Mr. Barker thinks. He reminded the Z.B.A. that he does not live there and neither does the petitioner, therefore they have no right to expect us to approve something that they themselves would not agree to if it were placed next to their homes. He added that he thinks this is why the petitioner wanted to put it on McBride Road, so he can reap the monetary rewards he will get for the monthly rent paid to him by the cell company but not have to live next to it, or look at it, or be exposed to it. He reiterated that it is unacceptable to him as a resident and taxpayer of Fayette County, and he wants to express his strong opposition to the placement of the cell tower on their road and in their neighborhood next to their homes. Based on his concerns and the concerns of others in the room and the issues he presented this evening, he asked the Z.B.A. to deny the petitioner's request.

Prettine Johnson of 185 Shamrock Drive stated that her property was one of the properties which was going to be affected. She said she lived next to Ms. Evans. She commented that number one she and her husband are facing deja-vu, because her home in Massachusetts was selected to be near a cell tower, but thank God for the panel who was very nice. She said they had a man who lived around cell towers who had cancer three doors down from her, and her son who suffers illness caused them to pack up her husband's business, and living on a low income to come here to Georgia for her son's health. She commented that her son was on steroids, and she had medication that she can present to the Z.B.A., that they have not had to use since they came from Massachusetts. She remarked that she was so grateful that she did not have to look for loans for anything for her son now that she is here on this property. She said that they haven't had a real outburst in two years, thank God, and they gave up a lot. She asked the Z.B.A. to please deny this cell tower. She went on to say that her sons walk right through there to the gas station since there is a trail from her house, but the cell tower will just be right there. She advised that they did not survey the property properly, because her property has a dent in the side of Ms. Evans but they gave her the dent in the back. She commented that when she and her husband were off on vacation a couple of months ago, she saw men in her back yard, and she walked out and asked them what they were doing back there because they had not really had any person traveling back there. She remarked that they said to her that Mr.

Mask had asked them to survey the property because he is going to give a piece of land to his daughter to build a house. She said she got up one night and said to her husband that no one is back there looking at nothing, and that she was going to try to find out what was really going on. She stated she went up the street and started asking questions, and found that it was a cell tower which is going to be put up near her property. She continued by saying that she went to all her neighbors and asked if any person came to them, and did they know that a cell phone tower is going up in the back of me and Ms. Evans. She said Ms. Evans replied that she did not know, so she asked the other people across the street, but no person knows, and no person came to them, and they are home all day or most of the day. She added that this is how she knows what is really going on since no person came and told her anything, and this is said because it is her property that they are dealing with. She asked the Z.B.A. to take it into consideration that there are health risks and she knows that. She instructed the Z.B.A. to go into Lincoln, Massachusetts Zoning Board, and she lived in Brodgon, Massachusetts, and Lincoln, Massachusetts really had so many problems that they had to pull the cell tower down. She stressed that it is becoming an epidemic with the cell towers. She said she was a business woman, and she could wait to use her cell phone when she gets into the areas where her cell phone can be used. She added that she has a child at Whitewater and a grandchild who goes to school in the area, and God knows if anything happened to her mother that she would send her back to us. She pointed out that the tower is actually next to the school and she does not want to see other kids get hurt because she has a love of children. She commented that if she could have had twenty children that she would have, but she can't. She asked the Z.B.A. to please consider the children, just the children, and not even consider her, because she has lived her life already. She further asked the Z.B.A. to consider why they bought their property, for their children to grow up, inherit, and look back and say Mom and Dad had so much sense that they left this property for them. She stressed that they did not want their property destroyed, because she called real estate people to look at her property yesterday, Suzanne Johnson has looked at her property and this is how upset she is. She advised that her son has a nervous problem, asthma, allergy. She added that he has everything, you name it and he has got it, but they have not had to spend the money and in Massachusetts they were spending like \$10,000 to \$15,000 per year on medical bills, and the government had to step in and help them. She remarked that they were happy to be here in Georgia. She thanked the Z.B.A. and asked them to please vote this down.

Brian Horton of 762 McBride Road stated that out of the people here he was probably going to be one of the ones directly in the variance zone. He pointed out that if it was only one person and one piece of property affected that you are issuing a variance on maybe he could see it, but here you are looking at somewhere in the neighborhood of eight to ten properties that will be within the 1,000 foot range of this tower. He remarked that no matter if you issue the variance for the closest one, there are going to be another eight to ten properties also still within the 1,000 feet that the Zoning Ordinance requires. He remarked that he thought this was too many properties to impact for this tower and, like he said, if it was maybe one and it was less than 50 feet or something like that, then he could see it being a burden on the cell phone companies, but they are impacting at least eight to ten properties within 1,000 feet, even though they are coming on to the closest one, which would be the 236 foot variance, but still there are another eight to ten properties involved there. He said he thinks that this is too many properties within the 1,000 foot to issue a variance. He asked the Z.B.A. to please turn this down.

Rick Ivey of 200 Shamrock Drive stated that the gentleman is right, that this is a heavily wooded area but the woods that he is talking about, you can hardly walk through them because it is young pine trees. He said he thought that the tallest one is probably 20 feet high, and are only that big around, so this tower is not going to be secluded or hidden. He expressed concern about the gentleman before who mentioned if we change the variance from 1,000 feet and we allow this thing then are we setting a precedent. He asked if we are then going to say well you know maybe a liquor store can be closer to a school than it is now. He remarked that he was not going to discuss the health issues. He advised that Charles McBride did put a tower on his property and his wife has Parkinson's Disease now. He added that whether that is related or not he doesn't know, but she didn't have it when they put it there. He commented that the gentlemen mentioned that it is not our job to say whether or not the radio waves affect anything, but he had a document that everyone might find interesting where towers have been put up, and this goes through several states, Arizona,

California, and it gets down to Atlanta, Georgia, Fulton County.

Chairman Beckwith interrupted Mr. Ivey and asked if this had reference to radiation.

Mr. Ivey replied that he wanted to show it to the Z.B.A. because it has reference to radio waves.

Chairman Beckwith advised that the Z.B.A. did not need to see it.

Mr. Ivey reported that he could not use his cell phone at his house and he works for a company that requires him to be on 24 hour call and that he dials into work to handle problems. He explained that in order to do this that he had to have an additional phone line put in, and he didn't mind paying the costs. He said he did not mind knowing the fact that when he passes the Trading Post coming to his house that he can't use his cell phone, but it is no big deal. He stated that he thought that there were enough folks here that you can see that they really don't want it. He reported that they don't want it because it is going to be ugly, hurt their property values, and they are afraid of it. He said it was like Ms. Evans said, there are a lot of things that we have done that we didn't know was harmful in the past. He commented that his father smoked cigarettes all his life, well he is not around anymore for him to sit on the porch and talk to. He remarked that he knew the Z.B.A. could not address the radio wave thing, but in some point in time somebody is going to have to. He went on to say that somebody somewhere is going to have to because they passed this thing he believes many years ago.

Chairman Beckwith reiterated that the Z.B.A. did not need to hear anymore about radio transmissions.

Mr. Ivey stated that the Z.B.A. needs to look at the emergency units in Fayette County and where they have access now and where they will have access after this tower is put up because it is documented that you cannot work police emergency equipment in certain areas, and the Z.B.A. needs to think about that before the tower is put there because that is documented. He advised that you could call DeKalb County and Fulton County and they will tell you that there are certain areas where their police radios will not work anymore and neither will their fire house stuff. He remarked that he appreciated the Z.B.A. putting up with him and listening to him, and he appreciates the job that the Z.B.A. does, but he respectfully requested the Z.B.A. to deny this.

Chairman Beckwith called for a recess at 7:47 P.M. He reconvened the hearing at 7: 51 P.M.

Scott Gilbert of 591 McBride Road stated that he owned his property and he was a registered voter. He said that the only point he wanted to make is that to grant this variance the Z.B.A. has to find that there are extraordinary and exceptional conditions that exist on this property, and other than the fact that it is just not big enough, he doesn't know that we've heard that. He added that he did not think we were going to hear that and asked that the Z.B.A. keep this situation in mind. He thanked the Z.B.A. for their time.

In rebuttal, Mr. Barker stated that he would kind of run down and touch on everything briefly. He said that one of the first issues which came up was whether or not the property was heavily wooded. He remarked that he did not know if the Z.B.A. drove out to the property, but it is a very heavily wooded parcel of property and there are a lot of young pines. He pointed out that on the other side of the young pines between the gas station on the Shamrock Road side is a pretty substantial row of hardwoods as well that would further shield the view from the homes off Shamrock. He commented that Mr. Cariola stated at the last hearing the original location was the best location on the property, however what he stated at the original hearing was that the original location was what East Jasper Tower felt was the best location on the property, and had the least amount of impact on homes. He added that the tower may be a little closer to some, but to the woods and the pine trees being taller it would be better shielded. He stated that they felt it would be the best location, however the Z.B.A. obviously did not feel that it was the best location and this is why he was back, to present some other options for locating the tower on the property. He confirmed that the industrial properties to the south are just too far south. He reported that Sprint actually has reviewed the tower that the County was planning on putting up down there, but didn't know if the County was still planning to do so or

not, but that tower did not work for Sprint. He noted that Sprint's engineers contacted the County and found that location and determined that it did not work for them. He went on to say that Sprint has to be further north in this area.

As far as setting a precedent, Mr. Barker stated that a decision on this, and he is sure the Z.B.A. knows, does not set a precedent that says as long as you are within 764 feet you will be approved, because it is a case by case basis and this is why the Z.B.A. is here to make those decisions and not in fact change the ordinance to that fact. In regard to the towers which are nearby, he confirmed that the nearest tower to this site is over 1.25 miles away and it is referenced in the original application which was submitted, and it is shown that tower does not work to provide coverage to the Highway 85 corridor. He said that safety issues, obviously the radiation issues, that he is not going to address them, since the Z.B.A. addressed them. He added that they were a fairly emotional topic and he wouldn't address that. He stated that there was a safety issue and the safety issue is not having coverage. He confirmed that numerous people have stated that there is not coverage up and down the corridor, and there is no coverage for average people who just drive the road, and there is no coverage for anybody that is stranded, and no coverage for anybody that needs to make 911 calls. He reminded the Z.B.A. that one gentleman actually stated that the lack of coverage is no big deal, and it may not be a big deal to him, but the F.C.C. actually mandates that Sprint provide coverage and have seamless coverage or they can pull Sprint's license for this area, so what may not be a big deal to some is certainly a big deal to others. He pointed out that the tower is not right next to any homes even though it was stated that it is next to numerous homes. He advised that the tower is a good distance from many homes and it is all heavily wooded property. He said that the fact eight to ten homes was mentioned, it is not within 1,000 feet of eight to ten homes. He confirmed that it would be a maximum of four homes that this tower would be within the 1,000 feet of.

Mr. Barker addressed the issue of the property not being big enough is true, however there is not a parcel of property, the hardship doesn't just come from this piece of property, the hardship comes from there not being a parcel of property that is large enough to accommodate one of these towers. He stated that they had done great due diligence in attempting to find a parcel because obviously they would have liked to avoid having to come before any boards. He said that this is possible in Fayette County, but unfortunately it is not possible in this area of Fayette County. He reiterated that they have done the due diligence work to try to find the most appropriate piece of property and they think they have found it. He added that anything they would have brought would have required these kinds of variance. He respectfully requested the Z.B.A. to approve the request.

At this time, Chairman Beckwith closed the floor from public comments.

Larry Blanks asked what the Z.B.A. was moving on since there were three options. He asked if the Z.B.A. selects which option or should there be a vote on all three options.

Chairman Beckwith replied that the Z.B.A. would look at each option. He asked Mr. Barker if all the options were agreeable to him if the Z.B.A. was to consider this in a positive light.

Mr. Barker replied any of the options are agreeable with them.

Chairman Beckwith said in order to set the record straight, the last time Mr. Barker was before the Z.B.A. that the Z.B.A. felt there was other information which could have been gotten. He stated that the Z.B.A. asked for that information so they could make a more informed decision and this is why Mr. Barker was here this evening.

Mr. Barker replied that was correct.

Chairman Beckwith said it was not that the Z.B.A. was telling Mr. Barker what to do, but the fact is that the Z.B.A. felt that there was more information needed because this is an issue the Z.B.A. is very concerned about.

Attorney McNally advised that it would be appropriate that if someone wants to make a motion in favor or opposed to one of the options that you do that, and if there is one option which is superior it will come out.

Larry Blanks made the motion to deny Option A. David Bartosh seconded the motion. The motion for denial of Option A. unanimously passed 5-0.

Chairman Beckwith called for another motion.

David Bartosh asked for clarification that the elimination of the 10 foot landscape strip was just on the west side of the subject property.

Mr. Barker replied that was correct.

David Bartosh made the motion to approve Option B. For the sake of discussion, Chairman Beckwith seconded the motion.

Mr. Bartosh said that since he was the only one who spoke up on that, that he would go ahead. He advised that you will find that the Z.B.A. takes anything it does very seriously and if you will look at the past record the Z.B.A. is pretty adamant about trying to maintain the integrity of the laws that have been written in regard to towers and many other variance requests which come in front of the Z.B.A. He explained that from time to time the Z.B.A. finds situations where sometimes a variance is required perhaps. He stated that in his mind, he has looked and agonized over this one quite a bit, because he doesn't care to look at these things at all and he really doesn't want any. He commented that unfortunately there are a couple of things that he would like to point out of this. He remarked that he was going to use the south side of the county, because one of the things about this location is that it is on the main corridor, and the Z.B.A. would like to maintain those towers in the main corridor along the traffic areas and out of residential as much as possible. He pointed out that it was stated that there is a lot of commercial property on 85 South, however there really isn't. He added that it is pretty rare along that area, so there are not a lot of other commercial type applications to consider in this. In regard to safety and schools, he confirmed that his children attend Mintor Elementary and this is something very much on his mind. He went on to say that because of the buffers that are set forth, the schools in the area severely limit the amount or where towers can be located. He commented that he had looked at the Kiwanis property, but this would not work because it would tucked out in the back because the school locations are unacceptable. He confirmed that this tower would allow co-locating and there are several tower companies down in this area right now and they are doing everything they can in every which direction to find towers. He stressed that this would satisfy several of them at one time. He said he was under the assumption last time that the County was in need of 911 service and that this is why we needed the tower but through some research on that he has been able to find out that 911 service is not needed for that tower. To clear the air on that, he noted that the County has an emergency backup system in case 911 fails and there is really no coverage down in this area and the County, if he is speaking properly on this, was looking at being able to take advantage of the tower to close that gap. In looking at the location, he said personally he felt like it minimized the impact of all the citizens in that area of the County because there really are no other places in that area. He remarked that the cellular service is important. He added that he knew people who say that they can do without it, and he can too because he just doesn't make a call when he gets down in this area. He stated that he knew he had to wait for certain areas but when you start looking at stuff like your Sheriff's Department and EMS that use cellular service a lot, in certain instances where the EMS may have to communicate with hospitals directly, that is done via cellular and not two-way radios. He reported that he knows there are other areas along in there, and a lot of other areas have been turned down and they are very restricted. He said that he feels the coverage is mandated of course by the F.C.C. and the Z.B.A. are not ones to really accommodate the F.C.C., but just looking at the overall picture he is viewing this as a place behind the commercial entity that will least impact the area tower wise. He remarked that he respected everyone's opinion on that and this is just his.

Mr. Blanks asked for clarification about the F.C.C. mandate for contiguous coverage.

Attorney McNally replied that there is a conflict. He advised that the F.C.C. does license these folks and they do require that they provide service according to their license. He said that this is where you run into these tremendous conflicts where we now have many areas denying cell tower use and there has been a movement underway by the industry folks to actually remove the ability to locate towers from local authorities because of the conflicts that have come about. He remarked that it is just as he had mentioned before with the radio waves, the Telecommunications Act in and of itself says that this cannot be something that the Z.B.A. can consider in their deliberations, but that is not to say that folks don't have concerns about it, but by stating it they have basically said we are not recognizing it and the Z.B.A. can't in making their zoning decision. He confirmed that, yes there is a mandate but it does not mean that they get to locate everywhere and anywhere, so this is not where the conflict comes in.

Mr. Blanks asked if they could lose their license if they do not provide continuous service through a corridor.

Attorney McNally replied yes sir. He added that if they do not provide satisfactory service that they could indeed have their license removed.

Mr. Blanks stated that he understood satisfactory service based on their limitations.

Attorney McNally replied that this would not be up to the County to make that decision.

Mr. Blanks stated that the point he wanted to make is that he does not think that for you to approve a particular cell tower by a local authority is going to cause any particular carrier to lose their permit to operate so he does not think that this is a valid argument on the County's side. He said the only other statement that he wanted to make is that sometimes you can't put 50 pounds of weight in a five pound box and this is what they are trying to do here. He remarked that they are trying to force fit something into something that doesn't fit.

Tom Mahon stated that he was not at the first meeting because he was out of town. He said he didn't know if he failed to hear what would be the least impact on any of the homes by moving the tower southwest with a line parallel to the highway. He asked what kind of an impact this would have and why did East Jasper Tower not choose that particular location.

Mr. Barker replied that the main reason they did not choose that particular location was because of their Environmental Firm. He explained that the gas tanks for the property containing the gas station, the tanks actually sit on that south property line, and it is nothing but a hill that drops down to that location that you are talking about.

Mr. Bartosh advised that what Mr. Mahon was talking about was more at the intersection of McBride and Highway 85.

Mr. Mahon pointed to a location on the site (along Highway 85) and asked Mr. Barker about that location. He asked if this location (indicated on plat which states existing tree line) would not have a least impact on any of these homes if it was moved in this direction.

Mr. Barker pointed out the location on the map for the audience. He advised that the existing tree line does not jut out and he did not know where that came from. He said that there are houses along McBride Road. He stated that the reason they moved the tower so far off of Highway 85 with the original location was to try not to be anywhere near those homes. He explained that as you move south and west to that location, the tower would be a lot closer than 764 feet to those homes across McBride Road. He added that there is also a home across Highway 85 that is just to the south of the church that sits over there. He commented that he didn't know what kind of an impact they would have on that home. He reported that their main concern was the homes near McBride Road but after the last meeting they figured moving it closer to the commercial, since there is not a spot on the property where they can meet 1,000 feet from all homes.

Mr. Mahon asked what was the least amount if the tower was moved anywhere. He said the reason he is saying that is because you have this house plotted here but none of the other homes. He stated that he applauded the fact that they are trying behind a commercial establishment such as the Publix on Highway 54 by the Peachtree City line. He added that to the Z.B.A. this was the best way of doing things why there is not a better spot on here.

Mr. Barker replied that this actually came up at the last hearing and they did not have the homes plotted out along McBride or Shamrock. He said that they had the surveyors go back out there and because they were moving it up closer to the commercial area, which is kind of the feeling they got when they left here, they sent the surveyors back out and they hit the homes in the Shamrock area, but they did not hit the homes along McBride Road near Highway 85. He explained that there are five homes between the existing house and Highway 85 along McBride Road, and they all sit as far back as that home, and some of them a little closer to McBride Road. He restated that there are five homes between the home that is shown and Highway 85, all along McBride Road. He commented that you could kind of see it better on the tax map that he had up before, but those homes were the reason they did not go with that location in the first place, because they were trying to minimize the impact by getting it back into the tree line. He remarked that it is an open field out in the area that Mr. Mahon is talking about, and the homes along McBride Road would have no shield between the tower and the open field because there is no tree line, nothing through there, so they set it back originally into the tree line, which is why it was so far back from McBride Road to begin with, to try not to have an impact on those homes. He said when they left last time they tried to move it closer to the commercial use.

Ron Mabra stated that his only point is the 1,000 foot. He said that they indicated that they looked at properties in the south corridor and they said that they found some but the owners did not want to approve a tower on those properties. He commented that he was not fully aware of the negotiations on those other properties, and maybe this is the best property that is willing to do business, but he is not sure of the other negotiations they have had with the other property owners. He remarked that maybe they didn't feel that it was enough.

Mr. Barker replied that the negotiations with the other property owners never got to the monetary stage because they decided that they did not want a tower on their property and there is really no way that they can get around that. He said it never got to the point where they were talking about a monthly rental rate. He added that he wished it had. He remarked that the monthly rental rate they have here is much higher than the industry standard since Mr. Mask knows what his property is worth, but the negotiations with the other property owners never got to the monetary stage.

Mr. Mabra asked if there was property down there that would accommodate a tower but it just hasn't been worked out.

Mr. Barker replied that it could not be worked out. He said he personally did the lease negotiations on all of these properties, and they are just not willing to lease property, and he doesn't know a way around that.

Mr. Mabra stated that he just wanted to make a point that there are other properties but they don't want to do it, and maybe they didn't get to the monetary value so this is just the point he wanted to make.

Mr. Bartosh said that he was not lobbying for the tower company by any means, but is it not true that this area has been searched over multiple times for many different carriers and this is pretty much a last option.

Attorney McNally replied yes sir. He said that in dealing with the County 911 System he of course spoke with tower builders and providers and this is a very tough area for them, there is no doubt about that. He stated that there have been other properties contacted, and he knows there is another one that is available but it is also one that this very board mentioned tonight as being one which is less desirable, the Kiwanis site. He reported that the Kiwanis site is one that would be a possibility,

but again, there is nowhere on that site where they could fit a cell tower which would not be closer to the school than the code requires.

Chairman Beckwith said that he had a couple of points he wanted to make before they take a vote. He stated that this has never been an easy process with cell towers. He remarked that he was one of the ones that Attorney McNally mentioned that got the County into a little trouble about making a statement about cell towers that had to do with the right of a cell tower provider to locate in the County. He commented that he found out to his dismay, with embarrassment and everything else, that they do have a right. He explained that cell tower providers and cell phone providers do have a right, if they exhaust all remedies and make a due diligence to do as much as they can to provide a location within the ramifications and rules of the ordinances. He added that this is why we are here tonight because up until six or eight months ago there was no remedy to a cell tower provider to come back and request a variance once a decision was made for zoning that was it, and this wasn't right and the ordinance was changed. He confirmed that now they have a right to request a variance to the ordinance. He explained that a variance is allowance to break the law, and an ordinance in the County is a law, and if certain circumstances are met the Z.B.A. has a final decision as to whether or not to allow someone to break the law, and it is because of this that they are here tonight. He stressed that every issue is different. He reported that over the last couple of years that the Z.B.A. has looked at a lot of tower locations, and a lot of situations where it is a very difficult situation. He went on to say that the County ordinance has established a 1,000 foot wide highway corridor, with the idea being that if the towers could be located there that it would be less of an effect, and provide more service than elsewhere. He said that Attorney McNally had mentioned the 1996 Telecommunications Act and all of this stems from that Act, and again the Act gives the right, not only does it give the right to the cell phone operators to provide service, it says that local jurisdictions can not keep them from providing service so the Z.B.A. is caught. He stated that he did not like for these tower situations to come up, but it is necessary. He remarked that he calls them a necessary evil. He went on to say that the fact we have to have towers is something that is here. He commented that another thing that the County has done is mandated that cell tower builders provide the opportunity for more than one cell tower user to put their antennas on the tower. He explained that if there was only one allowed on a tower it would look like a porcupine all over this County, as bad enough as it is, he has to tell you that, but because there are multiple users on towers the County, in its wisdom, has really limited the amount of towers which will be built and have to be built in the County. He said that because of all those things that they are here tonight. He stated that the final item he wanted to point out is that we face an issue not only in Zoning but also the Z.B.A., they have to look at the right of a property owner and try to balance that between the right of the people in the County, and the property owner to use his property as he sees fit, whether or not he gets money for rental of that property or not, and the amount of money is none of the Z.B.A.'s concern. He added that the fact he can do that in all cases and in most cases is the way of this Country, make money on your property. He explained that if it is unreasonable to restrict that then it is unreasonable, but this is not a consideration that the Z.B.A. has to make either. He said that his point is that in this particular case the tower company has looked at various locations, other locations that might be suitable are just not available. He reported that the tower companies do not have the right to condemn land and put their towers on the land if someone does not want to lease the property, that's it and go away and try to find some place else. He remarked that Mr. Barker and his organization have tried to do that, and in this particular case they have tried to minimize the amount of impact. He stated it is not something that everybody likes, and he doesn't like to see towers but there are definite benefits and there are definite legal situations that the Z.B.A. has to be concerned with. He said after saying all that, if anybody listened, he thinks Option B. is one that the Z.B.A. should consider.

Mr. Blanks stated that if this was affecting one house like some of the particular variances that the Z.B.A. has had in the past, where it was only one house affected and it was a 200 or 300 foot variance then he probably would not have a problem, but he recalled a particular tower rezoning request in the Brooks area that affected a neighborhood with multiple houses that the County turned down. Speaking about a precedent, he said in his opinion this affects too many homes.

Mr. Bartosh stated that he would like to address what Mr. Blanks just said because he wants to clarify something. He stated when he said that this particular piece of property was unique, he commented that he was well aware about Brooks, but what he is looking at here is a commercial corridor rather than agricultural-residential.

Mr. Blanks replied that Mr. Bartosh was correct.

Mr. Bartosh said that if this had not been located in a highway corridor that he would have looked at this a lot differently. He stressed that he wanted that on the record that this is what his differentiating distinction is on this particular piece of property.

Mr. Mahon stated that this board has strived for many years, and as Chairman Beckwith has said, they have struggled for many years as to how to handle this. He explained that the highway corridor effect is the best way to handle it. He said that in terms of Option B. that he had no problem with 1. and 2. of Option B. but he does have a problem with the severity of 3. of Option B. which is his biggest problem. He remarked that somehow if they could have been done he would feel more prone to going for all three but he has a real reservation with that because it is so severe of a variance. He added that in his opinion that is a severe variance. He asked Robyn Wilson if this variance was approved if it would not be the biggest in terms of distance.

Mrs. Wilson replied yes.

Mr. Mahon said that he would have to go on record saying he has a problem with that. He added that 1. and 2. he could let that go.

Mr. Bartosh stated that because of Mr. Mahon's statement he was going to defend his opinion on this. He said for the reason being, as the Z.B.A. knows, any time the 1,000 foot has been approached in the past that he has been very adamant about maintaining that and he thinks he has even been the single vote on a couple of them or right in there on it, but he is looking as this particular property as a unique situation and he assured he would look at everything else from that. He remarked that he did not see this as a precedent setting decision.

Chairman Beckwith pointed out that Option C. has a greater variance to be requested. He called for the question on Option B. which includes all three subsections because without all of them Option B. is effective.

The vote failed 2-3 with Larry Blanks, Tom Mahon, and Ron Mabra voting in opposition.

Chairman Beckwith stated he would entertain another motion.

David Bartosh made a motion to deny Option C. Tom Mahon seconded the motion.

The vote to deny Option C. passed 4-1 with Chairman Beckwith voting in opposition.

Chairman Beckwith stated that the decision lies by the Z.B.A. and thanked Mr. Barker for time. He thanked the audience for their participation.

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Chairman Beckwith asked if there was any further business.

Robyn Wilson advised that the deadline for the January Public Hearing was not until December 20, 2002. She stated that the Z.B.A. would be contacted regarding the status of the January Public Hearing.

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There being no further business, Tom Mahon made the motion to adjourn the meeting. Larry Blanks seconded the motion. The motion unanimously passed (5-0). The meeting adjourned at 8:32 P.M.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Respectfully submitted by:

BILL BECKWITH
CHAIRMAN

ROBYN S. WILSON
SECRETARY